SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 830

MITCHELL CANTRELL, HOBERT MEEK, ESTILL REED, ET AL.,

Appellants,

vs.

LESTER ADAMS, J. DOUGLAS TURNER, F. DANIEL.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

STATEMENT AS TO JURISDICTION

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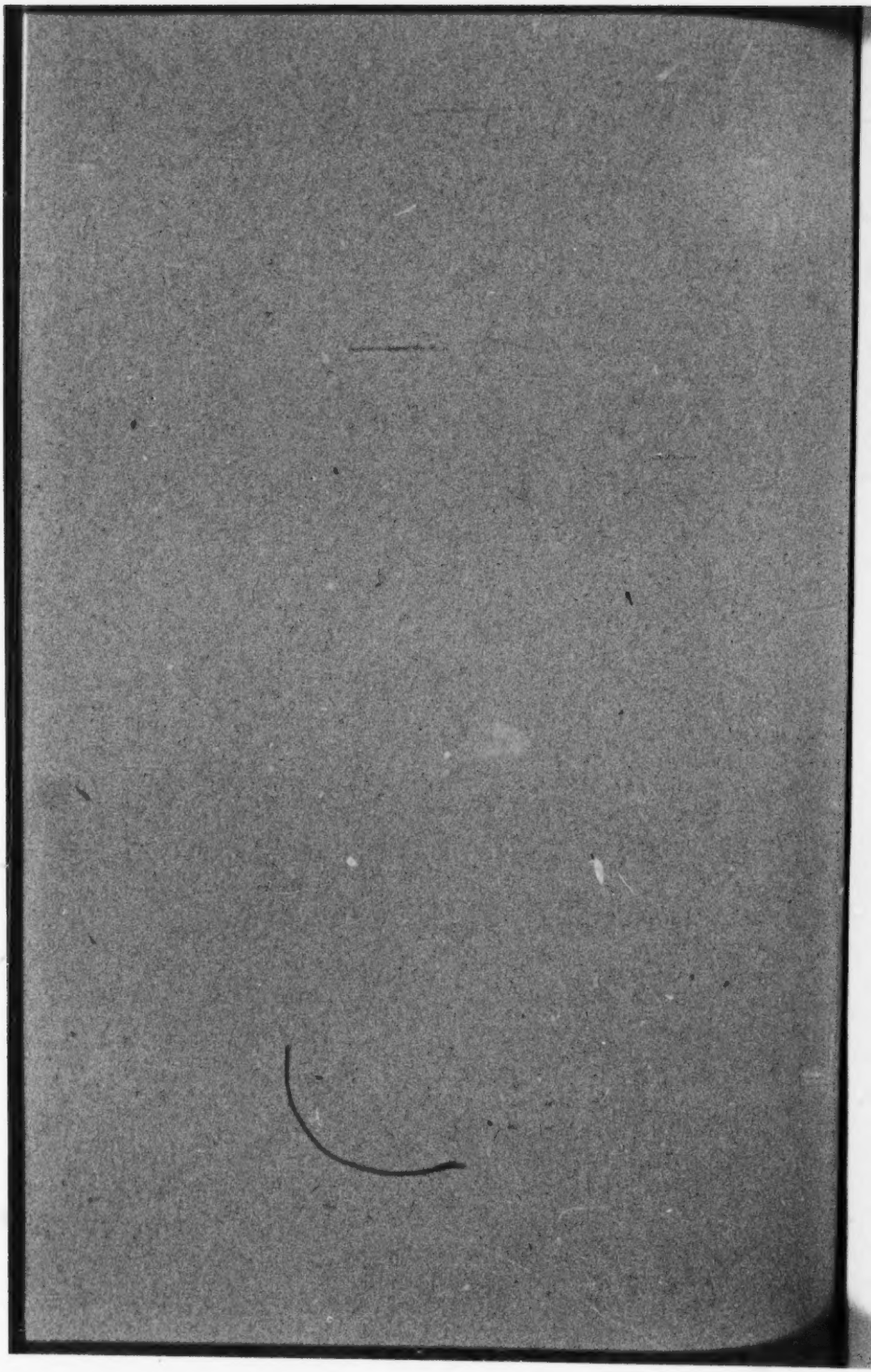

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IN THE COURT OF APPEALS OF KENTUCKY
APPEAL FROM THE JOHNSON CIRCUIT COURT.
HON. J. F. BAILEY, JUDGE.

MITCHELL CANTRELL, ET AL.,
Plaintiffs-Appellants,

vs.

LESTER ADAMS, ET CET., ET AL.,
Defendants-Appellees.

STATEMENT AS TO THE JURISDICTION OF THE UNITED STATES SUPREME COURT TO REVIEW THE DECISION OF THE COURT OF APPEALS OF KENTUCKY, IN THIS CASE.

The plaintiffs-appellants, having this day presented to the Chief Justice of the Court of Appeals of Kentucky, their petition for appeal herein, their assignment of errors, and their appeal and supersedeas bond, come now and file this their statement of the basis upon which they contend that the Supreme Court of the United States has jurisdiction to entertain a direct appeal in this case, to review the final order, judgment and decision of the Court of Appeals of Kentucky in this case, and the basis upon which they contend that said court should exercise such jurisdiction herein.

(A) The Facts

On May 4, 1944, there was held, in Johnson County, Kentucky, an election to decide one question only:

Shall spirituous, vinous or malt liquors be thereafterward sold in Johnson County, for a period of three years?

The returns from said election, as certified by defendants-appellees, who constitute the Board of Election Commissioners for that county, showed that those opposed to the sale of liquor therein, for said period, had prevailed in said election by a majority of 1313 votes, over those favoring such sale.

Before the date of said election, the Congress of the United States had passed the Selective Service Act, by which, in substance it was provided, that thro certain processes, administrative in character, certain persons who were qualified, legal voters in every locality in the United States, including Johnson County, Kentucky, should be selected for, and drafted into service in the armed forces of the United States, and should be removed from their places of abode and barracked in other places, where they were not legal, qualified voters.

Thro the operation of said Selective Service Act, there had been, at the time of said election, drafted into the said armed forces, 2700 legal, qualified voters of Johnson County, Kentucky, including appellants, neither of who was given any right to express his sentiment on the question presented at said election.

The absence of each of such persons, from their voting places was involuntary; and each of them, had he been present, had the right to vote at said election. No provision whatsoever, was made to cast or receive their suffrages.

(B) The Sort of Elections, Required by the Constitution of Kentucky

By the Constitution of Kentucky, Sec. 6, it is ordered that "All elections shall be free and equal."

The Court of Appeals of Kentucky has construed this section in the following cases, and has held that elections

at which a large number of voters did not have power to vote, were not free and equal, within the meaning of the Constitutional provision, and were therefore void.

Hocker v. *Pendleton,* 100 Ky. 726, 39 S. W. 250.
Walbrecht v. *Ingram,* 164 Ky. 463, 175 S. W. 1022.
Early v. *Raines,* 121 Ky. 439, 89 S. W. 289.
Robertson v. *Hopkins County,* 248 Ky. 370, 58 S. W. (2d) 621.

And in the case last cited the Court held that where voters were under either civil or military restraint, an election held in their absence was not free and equal.

(C) The Effect of the Construction Given Sec. 6, of the Kentucky Constitution by the Court of Appeals of Kentucky.

The effect of Sec. 6, Ky. Const. supra, and the construction of it by the Court of Appeals in the cases supra, is to erect that section, and the construction of it, and its application, a part of the law of the land, in the State of Kentucky. As a part of the law of the land, it provides due process, and is protected by the Fourteenth Amendment to the United States Constitution against infringement by Kentucky.

(D) The Constitutioinal and Statutory Provsions of Kentucky, on Which Appellants' Rights Are Founded

By Sec. 145 Ky. Const. the qualifications of voters in that State are defined. Appellants are thus qualified.

By Sec. 117.010 Kentucky Revised Statutes it is provided that all persons, male and female, possessing the qualifications provided by Sec. 145 Ky. Const. Supra, shall have the right to vote in Kentucky, in the precincts where they reside and are registered. Appellants reside and are registered in various precincts in Johnson County.

Plaintiffs-Appellants, contend that by these Constitutional and statutory provisions, Kentucky has clothed each one of them, and each one for whose benefit they sue, with a vested civil right, which is entitled to the protection of the Courts, and especially to the protection of the Supreme Court of the United States under the Fourteenth Amendment.

It is also their contention, that an election, submitting to the voters of a locality, a purely aesthetic question, and having for its object the establishment of a way or system of life, held while a large group of voters, whose votes if cast could decide the issue differently, are involuntarily absent from the locality, is, as to those absent voters, a denial of the equal protection of the laws, in contravention of the Fourteenth Amendment.

(E) Analogous Cases in the Supreme Court

Plaintiffs-appellants believe that certain cases heretofore determined by the Supreme Court of the United States, support their claim that that Court has jurisdiction of the question here made:

Nixon v. *Herndon,* 273 U. S. 536, 47 Sup. Ct. Rep. 446, 71 L. Ed. 759.

Nixon v. *Condon,* 286 U. S. 73, 52 Sup. Ct. Rep. 484, 76 L. Ed. 984.

Lane v. *Wilson,* 307 U. S. 274, 59 Sup. Ct. Rep. 875, 83 L. Ed. 1287.

Coleman v. *Miller,* 307 U. S. 469, 59 Sup. Ct. Rep. 989, 83 L. Ed. 1404.

United States v. *Classic,* 313 U. S. 323, 61 Sup. Ct. Rep. 1041, 85 L. Ed. 1382.

On the basis of those decisions, plaintiffs-appellants believe that if the denial of the ballot to colored voters is a denial of due process and equal protection, as to them,

then the same denial to soldiers, fighting for the preservation of all free rights including the right to select officials, and settle submitted questions, is a denial of due process and equal protection to them.

(F) The Force of Karloftis v. Helton, — U. S. —, — Sup. Ct. Rep. —, 88 L. Ed. 1171

Karloftis v. *Helton, supra,* is of no force here. In that case the petition failed to disclose the number of absentee soldiers, or that enough persons were absent to have changed the result of the election, had they been present and voting.

Here the absentees were more than double the majority obtained by the "Drys."

Respectfully submitted,

(Signed) CLEON K. CALVERT,
Attorney for Plaintiffs-Appellants.